No. 14-280

Supreme Court, U.S.
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In The
Supreme Court of the United States

HENRY MONTGOMERY,

Petitioner,

v.

STATE OF LOUISIANA,

Respondent.

ON WRIT OF CERTIORARI
TO THE LOUISIANA SUPREME COURT

BRIEF OF *AMICI CURIAE*

Pascal F. Calogero, Jr., Burk Foster, John Whitley, and The Louisiana Center for Children's Rights

IN SUPPORT OF PETITIONER

Keith Nordyke
NORDYKE & GREENFIELD, LLC
427 Mayflower Street
Baton Rouge, Louisiana 70802
(225) 383-1601

Counsel for Amici Curiae

Stephen M. Nickelsburg
Counsel of Record
Adam C. Goldstein
Alexander M. Feldman
Katie Barlow
Carlisle Overbey
Amy Montour
CLIFFORD CHANCE US LLP
2001 K Street, N.W.
Washington, D.C. 20006
(202) 912-5000
steve.nickelsburg@cliffordchance.com

Counsel for Amici Curiae

Dated: July 29, 2015

THE LEX GROUP DC • 1825 K Street, N.W. • Suite 103 • Washington, D.C. 20006
(202) 955-0001 • (800) 856-4419 • Fax: (202) 955-0022 • www.thelexgroup.com

QUESTIONS PRESENTED

1. Did *Miller v. Alabama*, 132 S. Ct. 2455 (2012), adopt a new substantive rule that applies retroactively to cases on collateral review?

2. Does this Court have jurisdiction to decide whether the Supreme Court of Louisiana correctly refused to give retroactive effect in this case to this Court's decision in *Miller v. Alabama*?

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INTERESTS OF *AMICI CURIAE*[1]

Amici Curiae include a former member of the Louisiana judiciary, a former Warden of Angola Prison, a legal academic, and a juvenile justice advocacy organization, all of whom have deep experience with and interest in the Louisiana justice system and the individuals incarcerated in the Louisiana prisons.

Former Chief Justice Pascal F. Calogero, Jr., is the longest serving Justice in the history of the Louisiana Supreme Court. Chief Justice Calogero was elected to the Louisiana Supreme Court in 1972 and became the Chief Justice in 1990, serving in that capacity until his retirement in 2008. While Chief Justice, he served as the Chief Administrative Officer of the Louisiana court system, and his tenure was marked by significant leaps forward in the provision of indigent defense services in the State, including centralizing the provision of indigent defense and encouraging and enforcing standards for the provision of counsel to defendants facing capital charges.

Burk Foster was an Associate Professor of Criminal Justice at University of Louisiana – Lafayette from 1974 through 2005. Professor Foster was the first criminal justice faculty member at the University, and wrote extensively about prison history, corrections policies, the death penalty, and

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[1] Pursuant to this Court's Rule 37.6, *Amici* state that no counsel for any party authored this Brief in whole or in part, and no person or entity other than *Amici* made a monetary contribution to fund or intended to fund the preparation or submission of this Brief. Counsel of record for all parties have consented to the filing of this Brief, and letters of consent have been filed with the Clerk.

other crime-related issues. Professor Foster's primary fields of academic expertise include sentencing and corrections, prison operations, and the death penalty. He was a contributing editor to The Angolite, the prisoner-published magazine of the Louisiana State Penitentiary at Angola, for sixteen years. After leaving Louisiana, he moved to Saginaw Valley State University in Michigan, where he served as professor of criminal justice and university ombudsman for six years.

John Whitley was the Warden of Louisiana State Penitentiary at Angola from 1990 to 1995. After starting his career as a classification officer at Angola, Warden Whitley rose to the level of Deputy Warden at Angola, then served as Warden of Elayn Hunt Correctional Center before becoming Warden of Angola. Warden Whitley later served for several years as the Court Expert to the Honorable Frank J. Polozola, U.S. District Judge for the Middle District of Louisiana, in the long-standing prison reform litigation. In 1992, Time Magazine credited Warden Whitley with turning around hopelessness and violence at Angola with "little more than his sense of decency and fairness."[2]

The Louisiana Center for Children's Rights ("LCCR") is the only statewide, non-profit advocacy organization focused on reform of the juvenile justice system in Louisiana. LCCR works to ensure that children's rights are protected at all stages of juvenile court proceedings, from arrest through appeal, and that the juvenile and adult criminal justice systems take into account the unique developmental differences between youth and adults.

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[2] Jill Smolowe, *Bringing Decency Into Hell: John Whitley*, TIME, Dec. 14, 1992.

LCCR continues to build the capacity of Louisiana's juvenile public defenders by providing support, consultation, and training, as well as advocating for system-wide reform and increased resources.

SUMMARY OF ARGUMENT

In *Miller v. Alabama*, this Court set forth the substantive principle that a sentence of "mandatory life without parole for those under the age of 18 at the time of their [homicide] crimes violates the Eighth Amendment's prohibition on 'cruel and unusual punishments.'" [3] This was based on the Court's insights and teachings "that in imposing a State's harshest penalties, a sentencer misses too much if he treats every child as an adult," in particular, "his chronological age and its hallmark features," "the family and home environment that surrounds him," "the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him," and even "that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth." [4]

Of all of these features, a fundamental premise for barring mandatory juvenile life without parole sentences in *Miller* and *Graham v. Florida* was "the possibility of rehabilitation when the circumstances most suggest it." [5] Observing that a sentence of life without parole "'forswears altogether the rehabilitative ideal,'" [6] the Court rejected the

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[3] 567 U.S. ____, 132 S. Ct. 2455, 2460 (2012).

[4] *Id.* at 2468.

[5] *Id.*

[6] *Id.* at 2465 (quoting *Graham v. Florida*, 560 U.S. 48, 74 (2010)).

prospect of "denying the defendant the right to reenter the community" [7] and "mak[ing] an irrevocable judgment about that person's value and place in society"[8] based on crimes committed when the defendant was a juvenile.

Amici support Petitioner's arguments that the promise of *Miller* and *Graham* was substantive, not merely procedural, and should be given retroactive effect for the reasons set forth in the principal Brief. *Amici* write separately to present, based on their experience and observations over decades of deep involvement with the Louisiana penal system, that the fundamental premise of *Miller* and *Graham* is real and not merely theoretical.

Amici come from all sides—as advocates for the defense and in support of parole and clemency applications, as members of the community, as a former member of the Louisiana Judiciary, and as a former Warden of Angola, long considered among the most violent and challenging prisons in the country.

From these diverse perspectives, *Amici* agree on a universal proposition: They all have observed juvenile offenders, convicted even of the most serious crimes, processed through one of the most historically difficult systems of justice, and housed under the most violent, hostile, and hopeless conditions, who can and do find the spark of rehabilitation, and who can and do grow and develop to the point where they could be welcomed back into society under any standard governing parole.

The Court necessarily considers the circumstances of one individual, Henry Montgomery,

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[7] *Graham*, 560 U.S. at 74.

[8] *Id.*

sentenced to die in prison under Louisiana's mandatory sentencing laws. But this case affects numerous individuals still serving mandatory sentences of life without parole based on juvenile homicide convictions despite this Court's holding that the sentence is unconstitutional. In the Louisiana *prison system* alone, there are more than two hundred individuals convicted and incarcerated for crimes committed while juveniles whose right to the mere possibility of parole turns on the Court's decision.[9]

All of these individuals' sentences were adjudged final before this Court's decision in *Miller*, and thus none will receive the possibility of parole if the decision is not given retroactive effect. *Amici* urge the Court to hold that the prohibition on mandatory life sentences for juveniles is not a mere procedural wrinkle, but a substantive, constitutionally-protected consideration to which every juvenile is entitled.

In this Brief, *Amici* present the personal stories of five individuals sentenced to a mandatory sentence of life without parole who nonetheless overcame their circumstances to demonstrate the ability of juveniles to reform is real. *Amici* do not minimize the suffering of the victims or society's legitimate interest in ensuring those who commit crimes are punished. Rather, *Amici* present support for the Court's long-held understanding that even violent juvenile offenders can reform.

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[9] *See Louisiana, Total Corrections Population*, THE SENTENCING PROJECT, http://www.sentencingproject.org/map/statedata.cfm?abbrev=LA&mapdata=true.

ARGUMENT

I. *MILLER* IS BASED ON THE FUNDAMENTAL PRINCIPLE THAT THE UNIQUE CHARACTERISTICS OF JUVENILES MANDATE INDIVIDUALIZED CONSIDERATION IN SENTENCING.

A. JUVENILES ARE LESS DEVELOPED AND MORE RECEPTIVE TO REHABILITATION.

Noting their nascent cognitive skills and superior potential for development, the Court has repeatedly recognized that juvenile offenders are categorically less culpable than adults. "Because juveniles have diminished culpability and greater prospects for reform, [the Court] explained, 'they are less deserving of the most severe punishments.'"[10] For these reasons the Court has embraced the "foundational principle: that imposition of a State's most severe penalties on juvenile offenders cannot proceed as though they were not children,"[11] and that "juvenile offenders cannot with reliability be classified among the worst offenders."[12]

The Court also has espoused the corollary that juvenile offenders are "most in need of and receptive to rehabilitation,"[13] in part because their "'signature qualities' are all 'transient.'"[14] In so doing, the Court emphasized that the attributes of juvenile offenders render them particularly strong candidates for rehabilitation. The "transient rashness, proclivity for risk, and inability to assess consequences both

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[10] *Miller*, 132 S. Ct. at 2464 (quoting *Graham*, 560 U.S. at 68).

[11] *Id.* at 2466.

[12] *Roper v. Simmons*, 543 U.S. 551, 569 (2005).

[13] *Graham*, 560 U.S. at 74.

[14] *Miller*, 132 S. Ct. at 2467 (quoting *Johnson v. Texas*, 509 U.S. 350, 368 (1993)).

lessened a child's 'moral culpability' and enhanced the prospect that, as the years go by and neurological development occurs, his 'deficiencies will be reformed.'" [15] "From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed." [16]

Burl Cain, Angola's Warden since 1995, has seen the most hardened criminals first-hand, and has stated that a life without parole sentence is morally objectionable, because even "'really horrible people' can change." [17] With respect to juveniles, Warden Cain has opined that although "some juveniles should stay in prison for all their lives, some juveniles shouldn't because they're going to change, [and] their life is going to change" over the course of their sentence. [18]

B. The Opportunity for Parole Is an Important Driver of Rehabilitation.

Parole underpins the goal of rehabilitation, and "serves a critical role in incentivizing good prisoner conduct and rehabilitation in prisons already

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[15] *Id.* at 2465 (quoting *Graham*, 560 U.S. at 68).

[16] *Roper*, 543 U.S. at 570.

[17] Cindy Chang, *Angola inmates are taught life skills, then spend their lives behind bars*, The Times Picayune (La.), May 15, 2012, http://www.nola.com/crime/index.ssf/2012/05/angola_inmates_are_taught_life.html (quoting Burl Cain).

[18] *What Warden Burl Cain has said about Parole for Juveniles*, CFSC Update (Citizens for Second Chances, New Orleans, La.), Feb. 2009, at 3, http://fairsentencingofyouth.org/wp-content/uploads/2009/05/februarynewsletter.pdf.

suffering from overcrowding."[19] The Court recognizes this inextricable link, describing rehabilitation as "a penological goal that forms the basis of parole systems."[20] "[T]he belief that a core function of prisons should be rehabilitation is woven deeply into the nation's cultural fabric. This belief in reforming offenders may become frayed at times, but it is durable enough to avoid becoming fully unraveled."[21]

Conversely, "mandating a life-without-parole sentence eliminates much of the incentive for rehabilitation by condemning the offender to permanent exclusion from society."[22] A sentence to die in prison "reflects 'an irrevocable judgment about [an offender's] value and place in society,' at odds with a child's capacity for change."[23] Requiring a juvenile offender to serve a mandatory "life without parole sentence improperly denies the juvenile offender a chance to demonstrate growth and maturity."[24] Such a punishment "'forswears altogether the rehabilitative ideal,'"[25] and amounts

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[19] Ashley Stebbins, Note, *A Tale of Two States Without a Sentencing Commission: How Divergent Sentencing Approaches in California and Texas Have Left Texas in a Better (and Model) Position*, 62 Baylor L. Rev. 873, 892 (2010); *see also* Paul J. Larkin, Jr., *Parole: Corpse or Phoenix?*, 50 Am. Crim. L. Rev. 303, 307 (2013) (describing parole as "a relatively modern invention that came into being in the nineteenth century to promote the rehabilitation of offenders.").

[20] *Graham*, 560 U.S. at 73.

[21] FRANCIS T. CULLEN & CHERYL LERO JONSON, CORRECTIONAL THEORY: CONTEXT AND CONSEQUENCES 25-26 (2011).

[22] William W. Berry III, *The Mandate of Miller*, 51 Am. Crim. L. Rev. 327, 348 (2014).

[23] *Miller*, 132 S. Ct. at 2465 (quoting *Graham*, 560 U.S. at 74).

[24] *Graham*, 560 U.S. at 73.

[25] *Miller*, 132 S. Ct. at 2465 (quoting *Graham* 560 U.S. at 74).

to a "'denial of hope.'" [26] Foreclosing parole consideration for juvenile offenders who exhausted their direct appeals before *Miller* would disregard these repeated observations as well as the rehabilitative capacity of a generation of inmates.

II. NUMEROUS JUVENILE HOMICIDE OFFENDERS HAVE EMBRACED REFORMATION IN THE FACE OF LIFE-WITHOUT-PAROLE SENTENCES.

Even in the face of this "denial of hope," juvenile homicide offenders in the prison system have shown the ability to reform, notwithstanding that "good behavior and character improvement are immaterial" since they expect to "remain in prison for the rest of [their] days."[27]

Amici provide the story of one Louisiana inmate, whom Louisiana released after he presented the merits of his case to this Court (notwithstanding his sentence of life without parole), and the stories of four Louisiana juvenile homicide offenders that continue to serve mandatory sentences of life without parole based on convictions in a legal system rife with well-documented institutional problems.

Jurists have acknowledged Louisiana's "systemic problem[]"[28]of grossly underfunding indigent defense programs over the past twenty years,[29] which were "even more pronounced in the delivery of the right to

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[26] *Graham*, 560 U.S. at 70 (quoting *Naovarath v. State*, 779 P.2d 944, 944 (Nev. 1989)).

[27] *Id.* (internal quotation omitted).

[28] *Boyer v. Louisiana*, 133 S. Ct. 1702, 1708-09 (2013) (Sotomayor, J., dissenting)

[29] *Louisiana v. Peart*, 621 So. 2d 780, 789 (La. 1993) (noting "general pattern has been one of chronic underfunding of indigent defense programs in most areas of the state.").

counsel to children in juvenile cases." [30] And observers have noted that the Louisiana judicial system was subject to widespread prosecutorial abuse in the 1980s [31] and racial discrimination through the 1990s.[32]

Amici do not address the merits of any specific conviction in this Brief. And, regardless of what the Court decides, these individuals may never rejoin society. Reversing the judgment of the Louisiana Supreme Court would simply apply this Court's prohibition on mandatory life sentences for those juveniles whose sentences were adjudged final before *Miller*. The resulting opportunity to present compelling and relevant mitigating factors and evidence of reform is a substantive, constitutionally-protected consideration to which every juvenile should be entitled.

A. GEORGE TOCA

A high school dropout lacking any useful skills or training, George Toca received a mandatory sentence of life without parole after he was convicted of killing

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[30] *A Strategic Plan to Ensure Accountability & Protect Fairness in Louisiana's Criminal Courts*, THE NATIONAL LEGAL AID & DEFENDER ASSOCIATION, at 4-5, Sept. 22, 2006, http://www.nlada.org/DMS/Documents/1159279328.66/Strategic%20Plan%20--%20FINAL%20REPORT%20_September %2022%202006_.pdf.

[31] *See Connick v. Thompson*, 131 S. Ct. 1350, 1370 (2011) (Ginsburg, J., dissenting) ("the evidence demonstrated that misperception and disregard of Brady's disclosure requirements were pervasive in Orleans Parish.").

[32] *See Campbell v. Louisiana*, 523 U.S. 392, 395 (1998) ("[B]etween January 1976 and August 1993, no black person served as a grand jury foreperson in [Evangeline] [P]arish, even though more than 20 percent of the registered voters were black persons.").

his best friend in 1984 when he was seventeen years old.[33]

Despite being sentenced to die in prison, Toca exhibited a thirst for learning and improving himself. In November 1999, Toca earned his high school diploma, scoring at or above average in writing, mathematics, science, social studies, and literature.[34] Toca went on to complete a 172-hour certificate program offered through the New Orleans Baptist Theological Seminary Louisiana State Penitentiary Extension Center in December of 2002.[35] And in 2004, he earned a Spiritual Growth Certificate from the Providence Learning Center of the New Orleans Baptist Theological Seminary.[36] In April of that year, he earned a carpentry diploma from the Louisiana Technical College, which required over 1700 hours of study and practice.[37]

In spring 2004, Toca enrolled in higher education courses, earning his Bachelor of Arts in Christian Ministry in 2010.[38] The degree program required both religious studies and traditional educational

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[33] Mot. to Correct Illegal Sentence at 1, *Toca v. Cain*, No. 301-875 "G," (Crim. D. Ct., Parish of Orleans, La., May 1 2013).

[34] *See* State High School Equivalency Diploma (Nov. 9, 1999). Non-public materials citied in this Brief are on file with Counsel of Record.

[35] *See* New Orleans Baptist Theological Seminary Certificate to George Toca (Dec. 10, 2002).

[36] *See* Providence Learning Center of New Orleans Baptist Theological Seminary (Jan. 23, 2004).

[37] *See* Board of Supervisors of La. Cmty. & Technical College Sys. Diploma in Carpentry (Apr. 2004).

[38] *See* Leavell College, Bachelor of Arts in Christian Ministry (May 15, 2010).

courses.[39] Toca thrived, graduating with a 3.02 GPA in the spring of 2008.[40]

Toca continued to challenge himself, completing several self-improvement programs offered at Louisiana State Penitentiary[41] and participating in a horticulture certification program. After eighteen months of study and practice, Toca graduated from the program in 2014, and passed multiple tests required to become a certified Arborist, Landscaping Horticulturist, and Commercial Pesticide Applicator in Louisiana.[42]

Despite decades of development and progress, the State of Louisiana still deemed Toca unfit for parole consideration, opposing his efforts to have *Miller* apply to his circumstances in the Louisiana courts. Opposing Toca's Petition for Writ of Certiorari in this Court, the State dismissed Toca's reformation, arguing that "evidence of exemplary prison conduct and achievements has no bearing on a petitioner's 'youth and attendant characteristics,' 'heightened capacity for change' 'and greater prospects for reform' at the time of petitioner's conviction."[43]

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[39] *Accreditation*, NEW ORLEANS BAPTIST THEOLOGICAL SEMINARY, http://www.nobts.edu/about/accreditation.html (last visited July 23, 2015).

[40] *See* George Toca New Orleans Baptist Theological Seminary Transcript.

[41] *See, e.g.*, Certificate of Completion, Lead Like Jesus Leadership Encounter (Sept. 2008).

[42] Interview by Micaela Alvarez with George Toca (June 25, 2015) ("Toca Interview"); Letters from Louisiana Dep't of Agric. and Forestry to George Toca (Jan. 3, 2014; June 26, 2014; Dec. 2, 2014).

[43] Opp'n to Pet. Writ Cert. at 21, *Toca v. Louisiana*, 135 S. Ct. 781 (2014) (No. 14-6381).

Yet, less than one week after Toca filed his Merits Brief, the State allowed Toca to walk freely out of prison—without any parole hearing or even an admission of guilt—via an *Alford* plea to a lesser charge of manslaughter. Faced with the prospect of this Court's review of its retroactivity position, the State's objection to not only the possibility, but also to the reality, of allowing Toca to walk out of prison evaporated, and on January 29, 2015, Louisiana set him free and mooted his case.

Thirty-one years removed from his conviction, Toca rejoined society as a law-abiding and productive member of society. Using the skills he learned in prison, Toca quickly found a job.[44] He now works full-time as a Horticulture Attendant at the LSU Health Science Center and is interviewing for a second job caring for neglected and abused children.[45]

Toca also started his own landscaping and pest control business, Royalty Horticulture, LLC, which he registered with the State just twenty-six days after being released.[46] Toca recently purchased a truck and is in the process of getting his business in the position to bid for Federal, State, and local landscaping contracts.[47]

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[44] *See* Toca Interview, *supra* note 42.

[45] *Id.*

[46] John Simerman, *Free after three decades in prison, George Toca sprints toward a new life*, THE ADVOCATE, Mar. 19, 2015, http://theadvocate.com/news/neworleans/neworleansnews/11828559-123/free-after-three-decades-in; *See also* Royalty Horticulture, LLC. city and state registration; La. Dept. of Agric. and Forestry Licenses and City of New Orleans Occupational License in George Toca's name.

[47] *See* Toca Interview, *supra* note 42.

Three decades ago, a seventeen-year-old juvenile was sentenced to die in prison. Today, that individual is a college graduate, well-respected pastor, and budding entrepreneur. His progression in the face of such hopelessness speaks volumes about the juvenile capacity for development and rehabilitation, and serves as a reminder of the dangers of juvenile mandatory sentencing schemes.

B. GEORGE GILLAM

Over the past four years, George Gillam has spoken about his life experiences at numerous places, including Tulane University, focusing on how to help people who come from a life of crime become valuable law-abiding members of society. During these visits, Gillam appears unshackled and without handcuffs, dressed in civilian clothing. Gillam often looks no different when he is on the grounds of Angola. He wears Nike sneakers and tucks his shirt into his jeans.[48]

Gillam is a "Class-A Trusty" at Angola.[49] Reserved for the most trusted inmates at Angola—whether serving life sentences or a term of years—Class-A Trusties have the highest security clearance afforded to any inmate and may work in and interact with the Louisiana community. Class-A Trusties do highway maintenance and repair and may travel to speak at schools and at community events.

This status reflects the trust that Gillam has earned during his roughly two decades in prison. Even though his sentence forecloses his rejoining society, he has dedicated himself to helping others,

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[48] E-mail from George Hamrick, *Tulane Law Clinic* (July 15, 2015).

[49] *Id.*

and is one of two inmates serving at the highest level of the Corrections Court Re-entry Program.[50] The program, which was started under the supervision of Orleans Parish Criminal District Court Judges Arthur Hunter and Laurie White, relies upon individuals such as Gillam who can "teach young convicts everything from welding to anger management to being a better father, in hopes that this will be their last time behind bars."[51]

Recognizing Gillam's work to help inmates develop the skills they will need after they are released, Warden Cain has described Gillam as a man with "the ability to make a difference in society," who is "an example of the moral rehabilitation taking place here at [Angola]."[52] Jim Rentz, the Regional Chaplain for the Department of Corrections, echoed that assessment, attesting that Gillam "has manifested to me that his behavior has been corrected" and, if considered for parole, Gillam "will be a benefit to society."[53]

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[50] *See* Letter from Burl Cain, Angola Warden to George Gillam (Oct. 19, 2010) (congratulating Gillam on selection as mentor in Re-Entry Rehabilitation program) ("Cain Letter"); Letter from George Gillam to George Hamrick, *Tulane Law Clinic* (June 2015) ("Gillam Letter").

[51] Cindy Chang, *Re-entry Court offers opportunity for young convicts to learn from lifers, Angola inmates are taught life skills, then spend their lives behind bars*, THE TIMES PICAYUNE (La.), July 25, 2011, http://www.nola.com/crime/index.ssf/2011/07/re-entry_court_offers_opportun.html.

[52] Cain Letter, *supra* note 50.

[53] Letter from Jim Rentz, Regional Chaplain, La. Dep't of Corrections, to Katherine Mattes, *Tulane Law Clinic* (undated) (relating to Gillam's potential consideration for change in status with Department of Corrections).

These accolades align with Gillam's behavior throughout his time in prison. He has not received a single disciplinary violation for violent behavior during his prison tenure.[54] He voluntarily enrolled in, and completed, anger management and victim awareness courses to better understand the full effects of criminal activity.[55] He teaches "Cage Your Rage" anger management and victim awareness classes to other inmates. He serves as the Pastor at the Ministry of Sound Doctrine, leading weekly congregations of roughly one hundred in sermons and Bible study sessions. And he earned his GED in 2002[56] and Bachelor of Arts in Christian Ministry in 2007.[57]

Gillam uses his own life and his crime to teach young men the importance of making the right decisions. Gillam's father died when Gillam was a young boy, and he moved in with his mother and her verbally and physically abusive boyfriend. Gillam was routinely kicked out of the house for days at a time.[58] When Gillam was sixteen, in 1994, his mother and her boyfriend simply disappeared.

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[54] *See* La. Dep't of Public Safety & Corrections Conduct Report, George Gillam (Dec. 14, 2012); *see also* Gillam Letter, *supra* note 50.

[55] *See* Louisiana State Penitentiary Certification of Completion of Cage Your Rage Anger Management Group (Mar. 2011); Louisiana State Penitentiary Certification of Accomplishment, Completing Victim Awareness Course (Sept. 30, 2010); Gillam Letter, *supra* note 50.

[56] *See Louisiana High School Equivalency Diploma* (May 9, 2002).

[57] *See* Leavell College, Bachelor of Arts in Christian Ministry (May 18, 2007).

[58] *See* Mot. to Vacate Sentence at 2, *Louisiana v. Gillam*, No. 370-260 E (Crim. D. Ct., Parish of Orleans, La., Feb. 5, 2013).

Without financial support, he turned to his twenty-eight-year-old brother, who was a police officer.[59]

That same year, his brother's apartment was burglarized, and Gillam and his brother tracked down two men they believed responsible. Gillam escorted the two men to a vehicle, and his brother drove the four of them to a deserted field.[60] The brother ordered the two men to exit the car and get face down on the ground. The brother shot the men, and, when one tried to escape, Gillam shot him in the leg.[61] The other man died.[62] Gillam confessed to the crime later that day. He was convicted of second-degree murder, which came with a mandatory sentence of life without the possibility of parole.

Gillam does not make excuses for his crime. Instead he works to support and educate people in similar life circumstances to avoid the choice he made. Although he has no children of his own, Gillam serves as the President of the Malachi Dads program, and spends countless hours helping inmates who are fathers connect with their children and become good role models.[63] He also helps

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[59] *See id.*

[60] *Louisiana v. Gilliam* [sic], 748 So. 2d 622, 627 (La. Ct. App. 1999), *writ denied*, 769 So. 2d 1215.

[61] *Id.* at 628.

[62] *Id.* at 626.

[63] *See* Certificate of Completion, Malachi Dads Program (Sept. 7, 2007); Certificate of Completion, Inside Out Dad Program (Sept. 2007); *see also* Mark H. Hunter, *Heart to Heart: Angola inmates get day with kids*, THE ADVOCATE, May 18, 2014, http://theadvocate.com/home/9186406-125/angola-inmates-get-day-with ("Hunter"); Malachi Dads Training Guides (2012); *see also* Gillam Letter, *supra* note 50.

organize days for children to visit the prison to play with their fathers.[64]

As a member of a panel on the importance of making good life choices at the Juvenile Justice Forum at Hosanna First Assembly Church, Gillam said "[y]oung people need to see the importance of making the right choices now," which "they can see through my life."[65]

Gillam cannot tell this story of progress and development to a parole board, however, because of a mandatory sentence imposed for a crime committed when he was sixteen years old.

C. CHRISTI CHERAMIE

Christi Cheramie is thirty-seven years old and twenty-one years into a sentence of life without parole. But her personal history reveals a human being who, through great effort, has remade herself into a valued member of her community. Warden Abrigale Patterson of Avoyelles Simmesport Correctional Center, where Cheramie was incarcerated from 1997 to 2005, wrote a letter for Cheramie's file praising her "remarkable change and improvement," noting she "was incarcerated as a child but has definitely grown into a woman who is worthy of a second chance in society."[66]

At fifteen years old, Cheramie had no prior record or prior involvement in unlawful activity of any

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[64] Hunter, *supra* note 63.

[65] *See* Katie Kennedy, *Panelists Counsel Students on Choices*, THE ADVOCATE, Oct. 23, 2010, at 2B.

[66] Letter from Abrigale Patterson, Warden, Avoyelles Simmesport Correctional Center (Feb. 17, 2005) ("Patterson Letter").

kind.[67] That year she fell in love with her first boyfriend, Gene Mayeaux, Jr., who enlisted Cheramie to help steal from his great aunt Mildred Turnage. Twice Mayeaux used Cheramie to distract Turnage while he took cash she had hidden away. Just sixteen days after her sixteenth birthday, Mayeaux—by then Cheramie's fiancé—brought Cheramie to help steal money from his great aunt a third time. As Cheramie was making coffee with Turnage, Mayeaux stabbed his great aunt to death.

After initially providing Mayeaux an alibi, Cheramie confessed to her mother and stepfather. Her stepfather took her to the sheriff's office in the middle of the night and left her there alone, without a lawyer or an adult supporting her. Cheramie admitted her role in the murder to a detective later that night, and brought him to the location of the stolen money, leading to Mayeaux's arrest.[68] The detective waited until her stepfather returned around eight in the morning to advise her of her *Miranda* rights and extract a formal statement from her.[69] She made her statement without any further discussion in private with her stepfather or a lawyer.

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[67] Questionnaire, Children Serving Life Without Parole Information Sheet (Jan. 12, 2009).

[68] Investigation Report, Detective Byron Juneau, Avoyelles Parish Sheriff's Department at 7 (undated); *see also* Mot. for Severance, Pre-Trial Tr., at 47, 49, 59, 63, 88, 89 *Louisiana v. Cheramie*, No. 79 678A (Crim D. Ct., Parish of Avoyelles, La., Apr. 12,1994) ("Cheramie Tr."); *This is Where I'm Going to be When I Die*, AMNESTY INTERNATIONAL, November 30, 2011, at 18, https://www.amnesty.org/en/documents/AMR51/081/2011/en/ ("Amnesty International Report").

[69] Investigation Report, Detective Byron Juneau, Avoyelles Parish Sheriff's Department at 8 (undated); Statement of Miranda Rights, Christi Cheramie, at 1.

She was arrested an hour later.[70] Three days after her arrest Cheramie was transferred to an adult criminal court without a hearing.[71]

Prosecutor Eddie Knoll believed Cheramie was just as guilty as Mayeaux if she willingly participated in the robbery.[72] Knoll has maintained as recently as 2010 that Cheramie's age was irrelevant to her culpability, saying that "at sixteen years of age indeed they know right from wrong."[73] For her involvement in the robbery and presence during the murder, she was charged with first-degree murder and faced the death penalty (a sentence now held to be unconstitutional for juveniles).

During jury selection, Cheramie overheard a potential juror say she deserved to die even if she was only present during the murder.[74] To avoid a death sentence, Cheramie withdrew her plea of not guilty and pleaded guilty to second-degree murder.[75]

Cheramie's plea mandated a sentence of life without parole, with no consideration of her substantial mitigating personal history. Her parents divorced when she was eight years old and she

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[70] Investigation Report, Detective Byron Juneau, Avoyelles Parish Sheriff's Department at 8, 9 (undated); *see also* Cheramie Tr., *supra* note 68, at 48, 88; Amnesty International Report, *supra* note 68, at19.

[71] Amnesty International Report, *supra* note 68, at 19.

[72] Interview by CBS Morning News (May 16, 2010) (http://www.cbsnews.com/videos/worthy-of-a-second-chance/) ("CBS Interview") with Eddie Knoll.

[73] *Id.* (adding "if I had to do it all over again I would do it again, no question about that.").

[74] Amnesty International Report, *supra* note 68, at 19.

[75] *Id.*

dropped out of school after the seventh grade to care for her grandfather. At the age of thirteen, she was admitted to the Gulf Coast Mental Health Center after she attempted to strangle herself and made threats that she would shoot herself.[76]

While at the hospital, Cheramie disclosed that her mother's prior boyfriend had raped her for years starting when she was eight years old, and that he had threatened to kill her if she told anyone.[77] Her psychiatric evaluation described Cheramie as "preoccupied with external approval and frequently show[ing] an anxious conformity to the expectations of others," and "willingly deferential to others and ready to modify her behavior to get their attention and approval."[78] She was also evaluated as having a learning disability and significant emotional and personality disorders. The psychiatrist who saw Cheramie before trial described her as "fearful of crossing" Mayeaux.[79]

Cheramie's accomplishments while in prison show her efforts to overcome the obstacles of her upbringing and her rejection of hopelessness. Throughout her incarceration Cheramie has been recognized by wardens, supervisors, and correctional officers as an empathetic, disciplined, and good-natured person. In a report recommending Cheramie

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[76] Gulf Coast Mental Health Center Crisis Note, 3 (Sept. 27, 1991).

[77] *Id.* at 4. (Cheramie's mother notified police in 1992 and charges were ultimately brought, but the ex-boyfriend was never tried due to Cheramie's conviction. *See* Amnesty International Report, *supra* note 68, at 17.)

[78] *Id.* at 7.

[79] Psychological Evaluation (May 27, 1994) (cited by Amnesty International Report, *supra* note 68, at 17).

for work release, her work supervisor stated that she had "good conduct record here at [Simmesport] and has shown respect to the officers as well as her peers."[80] Her road crew supervisor, Shelia Callihan, echoed these sentiments, stating that Cheramie "maintained an excellent conduct record while showing due respect to her officers and peers," as well as "a good attitude, always doing what she is told without delay or complaint . eager to work, and her performance is excellent."[81]

Warden Abrigale Patterson has described Cheramie as someone "always willing to help her fellow inmate in any way she is able," and noted that she was allowed to leave "on a daily basis and work in the community" based on a recommendation by Warden Patterson in 2001.[82] Warden Patterson further described Cheramie as "a model inmate worthy of a second chance in society."[83]

Further demonstrating Cheramie's trustworthiness, she earned the privilege of "Pink Dot Trusty" at the Louisiana Correctional Institute for Women, a status for which "lifers" are eligible after ten years of incarceration if they have a clean disciplinary record and are approved by prison officials.

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[80] Institutional Program Recommendation for Work Release (July 10, 2001) ("Work Release Recommendation").

[81] Letter from Shelia Callihan, Road Crew Supervisor, Avoyelles Simmesport Correctional Center (July 11, 2001); *see also* Letter of Recommendation from Christina Baird, Officer, Avoyelles Simmesport Correctional Center (undated) (describing Cheramie as an "honorable inmate" who is a "very caring and understanding person").

[82] Patterson Letter, *supra* note 66; Work Release Recommendation, *supra* note 80.

[83] *Id.*

Cheramie earned her GED in 2003.[84] She earned countless qualifications at the Louisiana Correctional Institute for Women, including her horticulturist state license [85] and a degree in agricultural studies.[86] Cheramie has also availed herself of nearly every available programming opportunity, gaining recognition for her hard work and dedication, [87] and for completing an anger management course among numerous other courses.[88]

Cheramie has used her own experience to mentor other inmates. Cheramie currently works in the Snack Shack, which offers food for purchase to inmates and staff during visitations, where one of her responsibilities is to train other inmates assigned to work there. She is responsible for overseeing cooking, sanitation, food preparation, and preparation of weekly menus. Cheramie also is active in the Culinary Arts Club and is preparing to take the Club's "Safe Serve" test.

Cheramie gives back to her community, both outside and inside prison: She assists the Louisiana School for the Visually Impaired, [89] serves in the St.

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[84] Louisiana High School Equivalency Diploma (Aug. 18, 2003).

[85] *See* Letter from Craig M. Roussel, Director, Louisiana Horticulture Commission to Christi Cheramie (Dec. 22, 2008).

[86] CBS Interview, *supra* note 72.

[87] Certificate of Appreciation, Hard Work and Dedication (Dec. 19, 2003).

[88] *See, e.g.*, Certification, Completion of Anger Management Course (Oct. 5, 1998).

[89] Certificate of Participation, Louisiana School for the Visually Impaired Program (Dec. 4, 2007).

John Community Church,[90] is an active participant on several inmates' boards, and has assisted prison personnel.[91]

The victim's living relatives have publicly stated that Cheramie has paid her debt to society. Turnage's great-niece Fay LaPraire stated on television that Cheramie should have an opportunity for parole because "everybody should get a second chance in life" and because Cheramie "was very, very young" at the time of the crime. She and her sister Ann Constance opined that the victim herself would agree.[92]

D. LARRY SYLVESTER

Almost thirty years ago, in 1986, the Louisiana Pardon Board recommended that the Governor commute Larry Sylvester's life-without-parole sentence to a term of forty years. [93] Nothing happened.

Six years later, the Pardon board again recommended the commutation of Sylvester's sentence—this time to a term of sixty years with parole eligibility after serving one-third, and credit for good time. [94] Again, nothing happened.

Despite the repeated recommendations for clemency and release, at fifty-seven years old,

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[90] Certificate of Appreciation for Meritorious Service to the St. John Community Church (undated).

[91] Patterson Letter, *supra* note 66.

[92] CBS Interview, *supra* note 72, with Fay LaPrarie.

[93] *See* Letter from Lawrence Hand, Vice Chairman, Louisiana Board of Pardons (Nov. 7, 1986).

[94] *See* Letter from Sally McKissak, Chairman, Louisiana Board of Pardons (Jan. 15, 1992).

Sylvester remains in prison for a homicide committed when he was fifteen years old.

Sylvester was born into poverty and segregation.[95] His single mother had four children to raise.[96] Sylvester did not have clothes to go to school in and did not start school until he was eight years old.[97]

In 1973, Sylvester was arrested for the homicide of a store clerk during an attempted robbery.[98] Arthur Guillory, Sylvester's twenty-nine year old co-conspirator, told Sylvester that he had seen him steal from the store where Guillory worked, and that if Sylvester did not rob the clerk of a nearby service station, Guillory would report him.[99] Guillory gave Sylvester a pistol and told him to get the money bag from the clerk "regardless of what you have to do."[100] Sylvester waited behind the station, and then confronted the clerk, who also pulled a gun. Both the clerk and Sylvester fired, and the clerk was killed.[101]

Sylvester was arrested, interrogated for seven hours, and told he was not allowed to see his mother until he confessed.[102] Sylvester did not write the confession himself, and explained that he "did not have the education to do [so]."[103]

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[95] Interview by Carol Kolinchak with Larry Sylvester (June 18, 2015) ("Sylvester Interview").

[96] *Id.*

[97] *Id.*

[98] Voluntary Statement of Larry Sylvester (Jan. 30, 1973).

[99] *Id.*

[100] *Id.*

[101] *Id.*

[102] Sylvester Interview, *supra* note 95.

[103] *Id.*

Sylvester's trial started within three months of his confession.[104] After only nine hours, he was convicted.[105]

Sylvester arrived at Angola when he was sixteen years old.[106] At that time, killings and stabbings happened daily in the prison, and many inmates carried a shank.[107] The 1970s were a time of racial turmoil in Angola. Sylvester was called "nigger" and had eggs thrown at him.[108] Even in this brutal, unforgiving environment, Sylvester was able to improve himself.

He held Class-A Trusty status at Angola for nearly twenty-five years.[109] Now at Elayn Hunt Correctional Center, Sylvester works as a general orderly.[110]

Sylvester sought out educational opportunities in prison, successfully completing a legal education program in 1979, and was recognized as the Most Successful Student and Student of the Year.[111] He earned his GED and a certificate in literacy in 1990.[112] He went on to earn his Bachelor's Degree in Christian Ministry from the New Orleans Baptist Theological Seminary, where he was a Dean's List

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[104] *Id.*

[105] *Id.*

[106] *Id.*

[107] *Id.*

[108] *Id.*

[109] Verification of Custody Status (undated).

[110] Sylvester Interview, *supra* note 95.

[111] *See* Certificate of Completion Legal Training (Sept. 13, 1982); *see also* Most Successful Certificate from Legal Educational Project for Prisoners (Sept. 13, 1982); Student of the Year Certificate (Sept. 13, 1982).

[112] *See* Equivalency Diploma (Mar. 27, 1990).

student on at least two occasions.[113] He also earned a diploma in Graphic Arts from the Louisiana Technical Institute in 2008.[114]

Sylvester also has been an active participant in Catholic Ministries. He completed Catholic Foundations for Ministry & Theology, a three-year course sponsored by the Catholic Diocese of Baton Rouge, in 2008.[115] He has been commissioned as a Catholic Peer Minister, Catechesis, and Extraordinary Minister of the Eucharist.[116] In these capacities, he serves as a spiritual advisor for his peers in prison, administers the Holy Communion, and instructs recent converts to the Catholic faith. Sylvester also has completed hundreds of hours of Bible studies and fellowship courses.[117]

Sylvester participated in many other programs at Angola, successfully completing the Anger Management Program and Substance Abuse Programs, including AA's Twelve Step Program.[118] He has taken parenting classes, CPR Training, and

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[113] *See* Associates in Christian Ministry (2002); *see also* Bachelor of Arts in Christian Ministry (2005); Letter from L. Thomas Strong III (Jan. 17, 2000) (noting Sylvester made Dean's List); Letter from L. Thomas Strong III (June 11, 1999) (same).

[114] *See* Louisiana Technical College, Graphic Communications (May 5, 2008).

[115] *See* Letter Certifying Completion of Catholic Foundations for Ministry Religious Education (Mar. 6, 2008).

[116] *See, e.g.*, Enrichment Catechist Certification (Dec. 2007).

[117] *See, e.g.*, Certificate of Achievement and Completion of Catholic Bible Study (Jan.–May 2004).

[118] *See, e.g.*, Certificate of Completion of Anger Management Program (Oct. 13, 2005); Certificate of Completion of Twelve Steps and Twelve Traditions of Alcoholics Anonymous (Dec. 26, 1994).

HIV/AIDS Peer Education Classes.[119] In addition, Sylvester has long been an active member of the Angola Jaycees and Lifers Association, which are dedicated to self-improvement and to giving back to the community.[120]

At Angola, Sylvester worked in the area where the non-inmate staff who live within the confines of Angola resided.[121] He also worked on clean-up crews outside the prison gates.[122]

When Sylvester presented his circumstances to the Louisiana Pardon Board, he was twice recommended for a sentencing commutation. But he cannot present his circumstances to the Parole Board because his mandatory sentence denies the possibility of parole.

E. TAURUS BUCHANAN

As a young boy, Taurus Buchanan lived with his mother, down the street from his uncle and mentor. When Buchanan was thirteen years old, his uncle was shot in the back of the head and died. Two years later, Buchanan's mother went to rehab to address a

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[119] *See, e.g.*, Certificate of Completion, Inside Out Dad, (Dec. 6, 2011); Participation Certificate, HIV/AIDS Peer Education Class; Certificate of Completion, "C" Level course in Cardiopulmonary Resuscitation (July 26, 1994).

[120] *See, e.g.*, Certificate of Completion in Speak-Up Jaycee (Oct. 5, 1990); Letter from Angola Lifers' Association to Louisiana Board of Pardons (Feb. 23, 1995) (asking "to take every possible consideration . when you review Mr. Sylvester's Application for Diminution of Sentence").

[121] Sylvester Interview, *supra* note 95.

[122] *Id.*

cocaine addiction. Buchanan went to live with his grandmother.[123]

When he was sixteen, Buchanan was preparing food for a bus trip to New York with a gospel group and his father. His grandmother asked him to go outside to check on his cousins. Buchanan saw his younger cousins fighting with another boy. Buchanan came to their aid and ended the fight with a single lethal punch.[124]

Buchanan was tried as an adult and convicted of second-degree murder by a vote of 10-2, and sentenced to mandatory life without parole.[125] In 1992, at the age of seventeen, Buchanan was transferred to Angola.

Now thirty-eight years old, Buchanan has worked diligently for the last twenty-three years to improve himself and to assist others. Buchanan is an integral member of the Juvenile Awareness Program, through which he helps young people understand the potential consequences of their behavior and choices. In this capacity, Buchanan has spoken to countless groups and hundreds of people, garnering special recognition from program leaders for his positive influence on the youth visiting Angola. Warden Cain has commended Buchanan and the other participants for "attempt[ing] to deter children from crime by exposing them to the hardship of life in

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[123] Interview by Michael Moore with Taurus Buchanan (Jan. 27, 2015).

[124] Trial Tr. at 40-42, *Louisiana v. Buchanon* [sic], No. 8-93-72 (Crim. D. Ct., Parish of E. Baton Rouge, La., Feb. 9, 1994).

[125] Minutes of Court at 7, *Louisiana v. Buchanon* [sic], No. 8-93-72 (Crim. D. Ct., Parish of E. Baton Rouge, La., Mar. 9, 1994).

prison."[126] And U.S. District Court Judge Ginger Berrigan has "commend[ed] Taurus Buchanan" for his "obviously heartfelt" efforts in this "truly extraordinary project."[127]

This commitment is consistent with Buchanan's history at Angola. Upon arriving, Buchanan began studying to obtain his GED, which he earned in 1996.[128] Buchanan has continued to take advantage of every educational program available, obtaining numerous skills-based certificates.[129]

Over time, Buchanan has shown high levels of trustworthiness and discipline. In 2005, Buchanan became an inmate counsel substitute, providing legal assistance to numerous inmates unable to afford counsel. Inmate counsel substitutes are screened carefully by the Department of Corrections, and must participate in ongoing legal training.

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[126] Letter from Burl Cain, Angola Warden to Juvenile Awareness Program Staff and Inmate Members (Aug. 30, 1996) (commending staff and inmates involved with Juvenile Awareness Program).

[127] Letter from Hon. Ginger Berrigan, District Court, E.D. La., to Cathy Jett (Oct. 1, 1997) (commending Buchanan's work with juvenile offenders in the Juvenile Awareness Program).

[128] *See State High School Equivalency Diploma* (Dec. 18, 1996).

[129] For example, Buchanan has been awarded a certificate of achievement from the University of Southeastern Louisiana in creative writing, and certificates in Experiencing God, Substance Abuse Clinic, and Anger Management. He participated in the Folks Campus Technical Vocational School for Graphic Communications in 2004-2005 and the Association of Literary Arts Qualities of Leadership Program in the summer of 2008. *See* Certificates in Taurus Buchanan's file.

Buchanan also has earned the designation of a Class-A Trusty.[130]

Buchanan has worked to gain other work and life skills during his sentence, working on the prison beautification crew, in the culinary department, as an orderly, and as a tutor.[131] He is an active participant in the church community, serving as a member and Junior Deacon of the Full Gospel Businessmen Fellowship.[132] And Buchanan is an honorary member of the Human Relations Club at Angola, providing toiletries and food items to inmates in hospice care, among other charitable efforts.[133]

Against the backdrop of this growth and development, Buchanan met and married his now-wife, who visited Angola in 2009 with a Christian group. She was drawn in by his charisma and passion. They stayed in touch, and married one year later, in May 2010.

Sentenced to life without parole for throwing one lethal punch at the age of sixteen, Buchanan is barred from presenting evidence of his reform and fitness to rejoin society, solely because his conviction was adjudged final before *Miller*.

CONCLUSION

Amici recognize that the question before the Court is a legal one, and that the circumstances of each individual case may not directly bear on the

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[130] *See* Louisiana State Penitentiary Classification Dep't Letter (Apr. 12, 2006) (approving change in custody status to Class-A Trusty in inmate's file).

[131] *See* Progress Report of Buchanan While in Angola.

[132] *Id.*

[133] *Id.*

Court's consideration. *Amici* also recognize that not every life-sentenced individual's circumstances will be sympathetic, as some may not have taken advantage of available opportunities and some may not have shown exemplary conduct. *Amici* respectfully submit, however, that the assessment and judgment of those individual circumstances is the function of parole boards, and that the Court should recognize the substantive and retroactive effect of the Eighth Amendment right not to be subject to a sentence that denies individuals convicted as juveniles the opportunity to ever make the case that they have reformed, changed, and earned the opportunity for parole.

For the foregoing reasons and those stated in Petitioner's Brief, this Court should reverse the judgment below.

Respectfully Submitted,

July 29, 2015

Stephen M. Nickelsburg
(*Counsel of Record*)
Adam C. Goldstein
Alexander M. Feldman
Katie Barlow
Carlisle Overbey
Amy Montour
Clifford Chance US LLP
2001 K Street, NW
Washington, DC 20006
(202) 912-5000
Steve.Nickelsburg@CliffordChance.com

Keith Nordyke
Nordyke & Greenfield, LLC
427 Mayflower Street
Baton Rouge, La 70802
(225) 383-1601